

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**BRIAN CARRICO; KACIE CARRICO;  
DON GATLIN; and DORA GATLIN;  
individually and on behalf of all others  
similarly situated,**

**Plaintiffs,**

**v.**

**UPONOR, INC.; UPONOR NORTH  
AMERICA, INC.; DOES 1 through 100,  
inclusive, whose true names are unknown,**

**Defendants.**

**Case No. 3:23-CV-00497**

**District Judge Eli Richardson**

**Magistrate Judge Jeffrey S. Frensley**

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**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF SPECIALLY APPEARING  
DEFENDANT UPONOR NORTH AMERICA, INC.'S MOTION TO DISMISS FOR  
LACK OF PERSONAL JURISDICTION OR, ALTERNATIVELY, TO (1) COMPEL  
ARBITRATION; (2) DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT AND  
CLASS ALLEGATIONS; AND (3) STRIKE CLASS ALLEGATIONS**

Specially appearing Defendant Uponor North America, Inc. ("UNA") hereby moves for an order taking judicial notice of the following document in support of its concurrently filed Motion to Dismiss for Lack of Personal Jurisdiction or, Alternatively to (1) Compel Arbitration; (2) Dismiss Plaintiffs' Second Amended Complaint and Class Allegations; and (3) Strike Class Allegations (the "Motion").

Exhibit 1: July 27, 2022 Order entered by the Superior Court for the State of California for the County of San Francisco, Granting UNA's Motion to Quash Service of Summons and First Amended Complaint for Lack of Personal Jurisdiction.

The Court may take judicial notice of Exhibit 1 pursuant to Federal Rules of Evidence 201(b) and (c), which provide that facts which are "not subject to reasonable dispute" can be judicially noticed, and a court "must take judicial notice if a party requests it and the court is supplied with the necessary information." *See also Chase Bank USA, N.A. v. City of Cleveland,*

695 F.3d 548, 553 n. 2 (6th Cir. 2012) (“We can take judicial notice of developments in related ‘proceedings in other courts of record.’”); *Creasy v. Frink*, No. 3:22-cv-00034, 2022 U.S. Dist. LEXIS 203248, at \*5 n.2 (M.D. Tenn. Nov. 8, 2022) (“The court takes judicial notice of the state court’s order dismissing the petitioner’s post-conviction opinion . . .”).

Dated: June 13, 2024

By: /s/ M. Andrew Pippenger

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*Attorney for Specially Appearing Defendant  
Uponor North America, Inc.*

### **CERTIFICATE OF SERVICE**

I, the undersigned attorney, do hereby certify that on June 13, 2024, the foregoing pleading was electronically filed with the Clerk of Court using the CM/ECF filing system which automatically sends email notifications of such filing to the following attorneys of record:

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**UPONOR NORTH AMERICA, INC.**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN FRANCISCO**

**BLOCK 6 JOINT VENTURE LLC, a  
Delaware limited liability company,**

**Plaintiff,**

**v.**

**BALFOUR BEATTY CONSTRUCTION  
COMPANY, INC. and CAHILL  
CONTRACTORS, INC., A JOINT  
VENTURE, a California joint venture dba  
BB/CC; BALFOUR BEATTY  
CONSTRUCTION COMPANY, INC., a  
Nevada Corporation; CAHILL  
CONTRACTORS, INC., a California  
Corporation; BALFOUR BEATTY  
CONSTRUCTION, LLC, a Delaware limited  
liability company; BROADWAY-O'BRIEN  
MECHANICAL INC., a California joint  
venture; BROADWAY MECHANICAL-  
CONTRACTORS, INC., a California  
corporation; O'BRIEN MECHANICAL,  
INC. II; a California Corporation; HAROLD  
EUGENE HAWES, an individual; UPONOR  
NORTH AMERICA, INC., a Delaware  
corporation; CAL-STEAM, a division of  
FERGUSON ENTERPRISES, LLC, a  
Virginia limited liability company; CAL  
STEAM, INC. aka CAL STEAM SUPPLY  
aka WIA OF CALIFORNIA, INC., a  
Virginia Corporation; FERGUSON  
ENTERPRISES, INC. aka FERGUSON US  
HOLDINGS, INC., a Virginia Corporation;  
OSBORNE COMPANY, INC., a business  
entity of unknown form; and DOES 1  
through 100, inclusive,**

**Defendants.**

**FILED**

Superior Court of California  
County of San Francisco

**JUL 27 2022**

**CLERK OF THE COURT**

BY: *[Signature]*  
Deputy Clerk

Case No. CGC-22-599085  
[Honorable ~~Suzanne R. Bolanos~~]

[Unlimited Jurisdiction] **RICHARD B. ULMER**

**[PROPOSED] ORDER GRANTING  
SPECIALLY APPEARING DEFENDANT  
UPONOR NORTH AMERICA, INC.'S  
MOTION TO QUASH SERVICE OF  
SUMMONS AND FIRST AMENDED  
COMPLAINT FOR LACK OF  
PERSONAL JURISDICTION**

Date: July 27, 2022  
Time: 9:30 a.m.  
Dept.: Dept. 302

Complaint Filed: April 7, 2022  
FAC Filed: April 20, 2022

**EXHIBIT**

126642794v1

**[PROPOSED] ORDER**

Specially Appearing Defendant Uponor North America, Inc.'s ("UNA") Motion to Quash Service of the Summons and First Amended Complaint filed by Plaintiff Block 6 Joint Venture, LLC ("Block 6") for lack of personal jurisdiction is **GRANTED**.

Defendant UNA contends that it has no contacts with California to warrant imposition of either general or specific jurisdiction. As an initial matter, Plaintiff bears the burden of proof on the propriety of jurisdiction. Even though a defendant is the moving party on a motion to quash, the plaintiff bears the burden of proof to establish a proper basis for asserting jurisdiction. (*Floveyor International v. Superior Court* (1997) 59 Cal.App.4th 789, 793-794.) The Court has reviewed Plaintiff's supplemental material and finds again that Plaintiff has failed to meet their burden.

In this case, the Court finds there is no basis for the assertion of jurisdiction over UNA. First, Plaintiff argues the Court may assert general or alternatively specific jurisdiction. "To comport with federal and state due process, California courts may only exercise jurisdiction when a defendant has sufficient minimum contacts with the state to satisfy 'traditional notions of fair play and substantial justice.'" (*Strasner v. Touchstone Wireless Repair & Logistics, LP* (2016) 5 Cal.App.5th 215, 221.) There are two types of personal jurisdiction: general jurisdiction and specific jurisdiction. (*DVI, Inc. v. Sup. Ct.* (2002) 104 Cal.App.4th 1080, 1090.) General jurisdiction over a defendant exists where the defendant's contacts are substantial, continuous and systematic. (*Id.*) Specific jurisdiction, on the other hand, requires the plaintiff to show that the defendant purposefully availed himself of forum benefits with respect to the matter in controversy; that the controversy is "related to or arises out of the defendant's contacts with the forum; and that the exercise of jurisdiction would comport with fair play and substantial justice. (*Id.*) "A parent company purposefully avails itself of forum benefits through the activities of its subsidiary, as required to justify the exercise of specific personal jurisdiction, if and only if the parent deliberately directs the subsidiary's activities in, or having a substantial connection with, the forum state. Only in those circumstances should the parent company "reasonably anticipate being haled into court"[...]" (*HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th

1 1160, 1169.) Accordingly, “[t]he mere ownership of a subsidiary does not subject a nonresident  
2 parent company to specific personal jurisdiction based on the subsidiary’s forum contacts.” (Id.)

3 Plaintiffs presents certain website pages attached to the MacDonald Declaration claiming  
4 UNA has conducted business in California and owns Uponor, Inc. such that California has  
5 jurisdiction over UNA. Specifically, Plaintiff relies on Mr. Schleiter’s Linked-In page which  
6 states, “Uponor North America, [is] a publicly traded manufacturing company [...]” (Supp.  
7 MacDonald Decl, Exh. A.) Plaintiff asserts that UNA owns the www.uponor.com website. (Supp.  
8 Schleiter Decl. para. 8, lines 23-24). The website stats, “that “Uponor North America has  
9 manufacturing in Apple Valley as well as Hutchinson, Minn.” and lists 14 distributors in the San  
10 Francisco Bay Area. (MacDonald Decl., Exh. 2; 5.) Uponor Corp.’s CEO and President Jyri  
11 Luomakoski in his August 2, 2013 affidavit in *George v. Uponor Corp.* (D. Minn. 2013) 988 F.  
12 Supp. 2d 1056, where he stated: “Uponor, Inc.’s shares are owned by Hot Water Systems North  
13 America, Inc. The shares of Hot Water Systems North America, Inc., are owned by Uponor North  
14 America, Inc.” (MacDonald Decl; Exh 9.) However, UNA asserts it is incorporated in Delaware,  
15 headquartered in Minnesota, UNA does not transact business in California, [and] UNA does not  
16 have offices, employees, assets, or any physical presence in California. (Supp. Schleiter  
17 Declaration.) Moreover, UNA’s declarations show that UNA is an out-of-state holding company  
18 that does not manufacture, distribute, supply, or sell any products at all, let alone in California.  
19 (Id.) UNA also does not directly own, and does not control, Uponor, Inc. (Id.)

20 The Court finds Plaintiff has failed to present competent evidence that UNA, as a  
21 corporate entity, has contacts with, in or directed at California that support the imposition of  
22 general or specific jurisdiction. The numerous unauthenticated websites provided by Plaintiff do  
23 not show substantial, continuous and systemic contacts to confer general jurisdiction over UNA.  
24 The mere fact that the website is publicly available or that an employee lists fact about the  
25 company on his personal LinkedIn page does not demonstrate that it is not reasonably subject to  
26 dispute. (See *Huitt v. Southern Cal. Gas Co.* (2010) 188 Cal.App.4th 1586, 1604, fn. 10.)  
27 Jurisdictional facts must be proved by admissible evidence at the hearing on the motion to quash.  
28 This generally requires declarations by competent witnesses. A properly verified complaint may

1 be treated as a declaration for this purpose (*Borsuk v. Appellate Division of Sup.Ct.* (2015) 242  
2 Cal.App.4th 607, 614), however an unverified pleading has no evidentiary value. Here the  
3 websites presented are not verified. The only admissible evidence provided by Plaintiff are emails  
4 regarding settlement negotiations between UNA and Plaintiff containing conclusory language,  
5 and no supporting facts related to jurisdiction. In other words, no real facts have been offered let  
6 alone facts which would carry the burden of proof. Here, none of Plaintiff's evidence  
7 demonstrates that UNA conducted an extensive portion of business in California. The current  
8 record also fails to establish that UNA purposefully directed its activities at California.

9 Finally, Plaintiff argues regardless, the Court can assert jurisdiction over UNA under  
10 principles of agency. Plaintiff argues that UNA owns the entity, Hot Water Systems, Inc., that  
11 owns Uponor, Inc. The general rule is that where jurisdiction exists over a subsidiary corporation,  
12 mere ownership by a parent corporation of that subsidiary, is insufficient to warrant imposition of  
13 jurisdiction over the parent corporation. (*Sonora Diamond Corp. v. Superior Court* (2000) 83  
14 Cal.App.4th 523, 553.) The court in *Sonora* went on to explain that additional facts and evidence  
15 beyond mere ownership could, judged on a case by case basis, support a finding of jurisdiction.  
16 "The Sonora court identified three circumstances in which jurisdiction may exist over the parent  
17 corporation based upon its subsidiaries contacts with the forum state. First, general jurisdiction  
18 may exist when evidence establishes the parent and the subsidiary are alter egos. [Citation  
19 omitted]. The party asserting alter ego liability must establish (1) such a unity of interest and  
20 ownership between the corporation and its equitable owner that the separate personalities of the  
21 corporation and the shareholder do not in reality exist and (2) an inequitable result if the acts in  
22 question are treated as those of the corporation alone. [Citation].... Second, the *Sonora* court  
23 explained the representative services doctrine (a species of agency) supports the exercise of  
24 jurisdiction when the local subsidiary performs a function that is compatible with, and assists the  
25 parent in the pursuit of, the parent's own business. [Citation]. Third, the *Sonora* court recognized  
26 [a]gency may confer general jurisdiction in the forum state over a foreign corporation, but only  
27 where the nature and extent of the control exercised over the subsidiary by the parent is so  
28 pervasive and continual that the subsidiary may be considered nothing more than an agent or



instrumentality of the parent, notwithstanding the maintenance of separate corporate formalities.... The nature of the parent's control over the subsidiary must be over and above that to be expected as an incident of the parent's ownership of the subsidiary, but must reflect the parent's purposeful disregard of the subsidiary's independent corporate existence.” (*DVI, Inc, supra*, 104 Cal.App.4th at 1094.) In this case, UNA does not own the stock or assets of Uponsor or control Uponsor’s operations and decision making. (Schleiter Decl., ¶ 10.) The mere fact that UNA is the parent company is not sufficient to find the requisite contacts in California by UNA as a corporate entity. UNA is a separate entity from Uponsor and must be judged by its own contacts. “The proper jurisdictional question is not whether the defendant can be liable for the acts of another person or entity under state substantive law, but whether the defendant has purposefully directed its activities at the forum state by causing a separate person or entity to engage in forum contacts. That constitutional question does not turn on the specific state law requirements of alter ego or agency, although the inquiry may be similar in some circumstances.” (*Anglo Irish Bank Corp., PLC v. Superior Court* (2008) 165 Cal.App.4th 969, 983.) Here, while it is undisputed that UNA is—at least indirectly—the parent company of Uponsor, this is inadequate to establish personal jurisdiction. As stated above, much of the evidence introduced by Plaintiff in support of the opposition is not admissible. Regardless, Plaintiff’s opposition and proffered evidence suggest a theory that may be adequate to support the exercise of personal jurisdiction over UNA. (See *Anglo Irish Bank Corp., PLC v. Superior Court, supra*, 165 Cal.App.4th at p. 984 [specific personal jurisdiction established based on actions of subsidiary’s employees who “visited California to meet with potential investors at the specific request of the [parent company]”; business card identifying employee as affiliated with parent company and “the need to obtain approval from the [parent company] to make the loans are further evidence” that employee “was acting on behalf of the [parent company] as well as the other entities”].) Here, the Court finds based on the admissible evidence UNA has established that there is no connection between the conduct of UNA and the alleged wrongdoing to support jurisdiction in a California court.

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1 IT IS SO ORDERED.

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3 Dated: 7/27/20

4 LL  
The Honorable ~~Suzanne R. Bolanos~~  
Judge of the San Francisco County Superior Court RICHARD B. ULMEF

5  
6 Submitted by:

7 

8 Jeffrey M. Goldman  
9 TROUTMAN PEPPER HAMILTON SANDERS LLP  
10 Attorneys for Specially Appearing Defendant  
11 Uponor North America, Inc.